

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1093
Committee Substitute Favorable 6/7/12

Short Title: Agricultural Regulatory Reform.

(Public)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REGULATORY RELIEF FOR FARMERS BY DESIGNATING THAT AN ADDITIONAL REPRESENTATIVE OF AGRICULTURE SHALL BE INCLUDED AMONG THE GENERAL ASSEMBLY'S APPOINTMENTS TO THE ENVIRONMENTAL MANAGEMENT COMMISSION; BY REQUIRING THAT NOTICE BE GIVEN TO THE BOARD OF AGRICULTURE WHEN ANY PROPOSED RULE WOULD DIRECTLY AFFECT AGRICULTURE; AND BY CLARIFYING THAT THE POWER TO ISSUE CIVIL PENALTIES CONFERRED BY STATUTE ON THE COMMISSIONER, BOARD OF AGRICULTURE, PESTICIDE BOARD, OR STRUCTURAL PEST CONTROL COMMITTEE INCLUDES THE POWER FOR THOSE BODIES TO DETERMINE THAT NONMONETARY SANCTIONS, EDUCATION, OR TRAINING ARE SUFFICIENT TO ADDRESS A VIOLATION OF RULE OR STATUTE, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON AGRICULTURAL REGULATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-283 reads as rewritten:

"§ 143B-283. Environmental Management Commission – members; selection; removal; compensation; quorum; services.

(a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The Governor shall select the members so that the membership of the Commission shall consist of:

- (1) One who shall be a licensed physician with specialized training and experience in the health effects of environmental pollution;
- (2) One who shall, at the time of appointment, be actively connected with the Commission for Public Health or local board of health or have experience in health sciences;
- (3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;
- (4) One who shall, at the time of appointment, be a registered engineer with specialized training and experience in water supply or water or air pollution control;
- (5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife conservation activities of the State;
- (6) One who shall, at the time of appointment, have special training and scientific expertise in hydrogeology or groundwater hydrology;



- 1 (7) Three members interested in water and air pollution control, appointed from
2 the public at large;
- 3 (8) One who shall, at the time of appointment, be actively employed by, or
4 recently retired from, an industrial manufacturing facility and
5 knowledgeable in the field of industrial air and water pollution control;
- 6 (9) One who shall, at the time of appointment, be actively connected with or
7 have had experience in pollution control problems of municipal or county
8 government;
- 9 (10) One who shall, at the time of appointment, have special training and
10 scientific expertise in air pollution control and the effects of air pollution;
11 and
- 12 (11) One who shall, at the time of appointment, have special training and
13 scientific expertise in freshwater, estuarine, marine biological, or ecological
14 sciences.

15 (b) Members appointed by the Governor shall serve terms of office of six years. Any
16 appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or
17 disability of a member shall be for the balance of the unexpired term. The Governor may
18 reappoint a member of the Commission to an additional term if, at the time of the
19 reappointment, the member qualifies for membership on the Commission under subsection (a)
20 of this section.

21 (b1) The Governor shall have the power to remove any member of the Commission from
22 office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of
23 G.S. 143B-13 of the Executive Organization Act of 1973.

24 (b2) The members of the Commission shall receive per diem and necessary travel and
25 subsistence expenses in accordance with the provisions of G.S. 138-5.

26 (b3) A majority of the Commission shall constitute a quorum for the transaction of
27 business.

28 (b4) All clerical and other services required by the Commission shall be supplied by the
29 Secretary of Environment and Natural Resources.

30 (c) Nine of the members appointed by the Governor under this section shall be persons
31 who do not derive any significant portion of their income from persons subject to permits or
32 enforcement orders under this Chapter. The Governor shall require adequate disclosure of
33 potential conflicts of interest by members. The Governor, by executive order, shall promulgate
34 criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of
35 persons under this section, giving due regard to the requirements of federal legislation, and for
36 this purpose may promulgate rules, regulations or guidelines in conformance with those
37 established by any federal agency interpreting and applying provisions of federal law.

38 (d) In addition to the members designated by subsection (a) of this section, the General
39 Assembly shall appoint six members, three upon the recommendation of the Speaker of the
40 House of Representatives, and three upon the recommendation of the President Pro Tempore of
41 the Senate. Of the six members appointed by the General Assembly, one member shall, at the
42 time of appointment, be actively connected with or have had experience in agriculture.
43 Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and
44 vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members
45 appointed by the General Assembly shall serve terms of two years."

46 **SECTION 2.** G.S. 150B-21.2 reads as rewritten:

47 "**§ 150B-21.2. Procedure for adopting a permanent rule.**

48 (a) Steps. – Before an agency adopts a permanent rule, the agency must comply with
49 the requirements of G.S. 150B-19.1, and it must take the following actions:

- 50 (1) Publish a notice of text in the North Carolina Register.

- 1 (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the
2 proposed rule.
3 (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
4 (4) When required by subsection (e) of this section, hold a public hearing on the
5 proposed rule after publication of the proposed text of the rule.
6 (5) Accept oral or written comments on the proposed rule as required by
7 subsection (f) of this section.

8 (a1) Additional Notice for Certain Rules. – If a proposed rule would have a direct impact
9 on agriculture, the agency must provide a notice meeting the requirements of subsection (c) of
10 this section to the Board of Agriculture. For purposes of this subsection, the term "agriculture"
11 shall have the same meaning as in G.S. 106-581.1.

12 (b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

13 (c) Notice of Text. – A notice of the proposed text of a rule must include all of the
14 following:

- 15 (1) The text of the proposed rule.
16 (2) A short explanation of the reason for the proposed rule and a link to the
17 agency's Web site containing the information required by G.S. 150B-19.1(c).
18 (3) A citation to the law that gives the agency the authority to adopt the rule.
19 (4) The proposed effective date of the rule.
20 (5) The date, time, and place of any public hearing scheduled on the rule.
21 (6) Instructions on how a person may demand a public hearing on a proposed
22 rule if the notice does not schedule a public hearing on the proposed rule and
23 subsection (e) of this section requires the agency to hold a public hearing on
24 the proposed rule when requested to do so.
25 (7) The period of time during which and the person to whom written comments
26 may be submitted on the proposed rule.
27 (8) If a fiscal note has been prepared for the rule, a statement that a copy of the
28 fiscal note can be obtained from the agency.
29 (9) The procedure by which a person can object to a proposed rule and the
30 requirements for subjecting a proposed rule to the legislative review process.

31 (d) Mailing List. – An agency must maintain a mailing list of persons who have
32 requested notice of rule making. When an agency publishes in the North Carolina Register a
33 notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the
34 mailing list who has requested notice on the subject matter described in the notice or the rule
35 affected. An agency may charge an annual fee to each person on the agency's mailing list to
36 cover copying and mailing costs.

37 (e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the
38 agency publishes the text of the proposed rule in the North Carolina Register and the agency
39 receives a written request for a public hearing on the proposed rule within 15 days after the
40 notice of text is published. The agency must accept comments at the public hearing on both the
41 proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

42 An agency may hold a public hearing on a proposed rule and fiscal note in other
43 circumstances. When an agency is required to hold a public hearing on a proposed rule or
44 decides to hold a public hearing on a proposed rule when it is not required to do so, the agency
45 must publish in the North Carolina Register a notice of the date, time, and place of the public
46 hearing. The hearing date of a public hearing held after the agency publishes notice of the
47 hearing in the North Carolina Register must be at least 15 days after the date the notice is
48 published. If notice of a public hearing has been published in the North Carolina Register and
49 that public hearing has been cancelled, the agency shall publish notice in the North Carolina
50 Register at least 15 days prior to the date of any rescheduled hearing.

1 (f) Comments. – An agency must accept comments on the text of a proposed rule that is
2 published in the North Carolina Register and any fiscal note that has been prepared in
3 connection with the proposed rule for at least 60 days after the text is published or until the date
4 of any public hearing held on the proposed rule, whichever is longer. An agency must consider
5 fully all written and oral comments received.

6 (g) Adoption. – An agency shall not adopt a rule until the time for commenting on the
7 proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have
8 elapsed since the end of the time for commenting on the proposed text of the rule. Prior to
9 adoption, an agency shall review any fiscal note that has been prepared for the proposed rule
10 and consider any public comments received in connection with the proposed rule or the fiscal
11 note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule
12 published in the North Carolina Register unless the agency publishes the text of the proposed
13 different rule in the North Carolina Register and accepts comments on the proposed different
14 rule for the time set in subsection (f) of this section.

15 An adopted rule differs substantially from a proposed rule if it does one or more of the
16 following:

- 17 (1) Affects the interests of persons who, based on the proposed text of the rule
18 published in the North Carolina Register, could not reasonably have
19 determined that the rule would affect their interests.
- 20 (2) Addresses a subject matter or an issue that is not addressed in the proposed
21 text of the rule.
- 22 (3) Produces an effect that could not reasonably have been expected based on
23 the proposed text of the rule.

24 When an agency adopts a rule, it shall not take subsequent action on the rule without following
25 the procedures in this Part. An agency must submit an adopted rule to the Rules Review
26 Commission within 30 days of the agency's adoption of the rule.

27 (h) Explanation. – An agency must issue a concise written statement explaining why the
28 agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the
29 agency to do so. The explanation must state the principal reasons for and against adopting the
30 rule and must discuss why the agency rejected any arguments made or considerations urged
31 against the adoption of the rule. The agency must issue the explanation within 15 days after
32 receipt of the request for an explanation.

33 (i) Record. – An agency must keep a record of a rule-making proceeding. The record
34 must include all written comments received, a transcript or recording of any public hearing held
35 on the rule, any fiscal note that has been prepared for the rule, and any written explanation
36 made by the agency for adopting the rule."

37 **SECTION 3.** Part 3 of Article 1 of Chapter 106 of the General Statutes is amended
38 by adding a new section to read:

39 "**§ 106-22.6. Exercise of enforcement powers.**

40 When any board, commission, or official within the North Carolina Department of
41 Agriculture and Consumer Services has the authority to assess civil penalties, such authority
42 shall not be read to require the issuance of a monetary penalty when the board, commission, or
43 official determines that nonmonetary sanctions, education, or training are sufficient to address
44 the underlying violation."

45 **SECTION 4.** This act is effective when it becomes law.